

**CERTIFICATION OF ADMINISTRATIVE RULES
FILED WITH THE LEGISLATIVE SERVICES AGENCY
OTHNI LATHRAM, DIRECTOR**

(Pursuant to Code of Alabama 1975, §41-22-6, as amended).

I certify that the attached is/are correct copy/copies of rule/s as promulgated and adopted on Friday, September 20, 2024, and filed with the agency secretary on Friday, September 20, 2024.

AGENCY NAME: Alabama Board of Massage Therapy

INTENDED ACTION: Repeal and Replace

RULE NO.: Chapter 532-X-7
(If amended rule, give specific paragraph, subparagraphs, etc., being amended) **532-X-7-.10(2) revised**

RULE TITLE: Complaints, Investigations, and Disciplinary Actions

ACTION TAKEN: State whether the rule was adopted with or without changes from the proposal due to written or oral comments:

Adopted with changes. N/A

NOTICE OF INTENDED ACTION PUBLISHED IN VOLUME XLII, ISSUE NO. 10, AAM,
DATED WEDNESDAY, JULY 31, 2024.

STATUTORY RULEMAKING AUTHORITY: Code of Ala. 1975, §34-43A-6.

(Date Filed)
(For LRS Use Only)

REC'D & FILED
SEP 20, 2024
LEGISLATIVE SVC AGENCY

Peggy Benson
Peggy Benson, AL
Certifying Officer or his or her
Deputy

(NOTE: In accordance with §41-22-6(b), as amended, a proposed rule is required to be certified within 90 days after completion of the notice.)

**ALABAMA MASSAGE THERAPY LICENSING BOARD
ADMINISTRATIVE CODE**

**CHAPTER 532-X-7
COMPLAINTS, INVESTIGATIONS, AND DISCIPLINARY ACTIONS**

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532-X-7-.01	<u>Grounds for Suspension, Revocation, or Refusal to Issue a License.</u>

Upon a finding that the licensee or applicant for licensure has committed any of the following misconduct, the board may suspend, revoke, or refuse to issue or renew a license or impose a civil penalty after notice and opportunity for a hearing pursuant to the Administrative Procedure Act:

(1) The license was obtained by means of fraud, misrepresentation, fraudulent transcripts, invalidated exam scores, or concealment of material facts, including making a false statement on an application or any other document required by the board for licensing.

(2) The licensee sold or bartered or offered to sell or barter a massage therapist license or a massage therapy establishment license.

(3) The licensee has engaged in unprofessional conduct that has endangered or is likely to endanger the health, safety, and welfare of the public, to include:

(a) Violation of the code of ethics applicable to the licensee.

(b) Practicing massage therapy at an establishment to which the licensed massage therapist is not registered.

(c) As the registered massage therapist for an establishment responsible for ensuring compliance with laws and regulations, has allowed a licensed MT who is not registered to the establishment to perform massage therapy at or through the establishment or has allowed an unlicensed person to perform massage therapy at or through the establishment.

(d) Administering treatment which poses a significant health risk to the client.

(e) Administering treatment in a negligent manner.

(f) Administering treatment which the massage therapist is not competent by training or experience to perform.

(g) Administering treatment which the massage therapist is not qualified by training or experience to perform.

(h) Violating the confidentiality of information or knowledge concerning a client.

(i) Offering massage therapy at a sporting event, convention, or trade show without obtaining the written approval of the owner or property manager of the site of the sporting event, convention or trade show or the organizer of the sporting event, convention, or trade show.

(j) Teaching massage therapy as a massage therapy instructor without a massage therapy instructor license, unless teaching continuing education as a visiting massage therapy instructor exempt under the statutes.

(k) Refusing to allow the designated board member(s) or investigator to inspect a massage therapy establishment or other business premises of a licensee during normal business hours.

(l) Aiding, assisting, procuring, or advertising any unlicensed person to practice massage therapy contrary to the rules and regulations of the Board or the Massage Therapy statutes.

(m) Engaging in sexual activity with a client, or attempting or offering to engage in sexual activity with a client, including but not limited to contact with the genitals or the female breast, within a client-massage therapist relationship.

(n) Making deceptive, untrue, or fraudulent representations in the practice of massage therapy or in relation to the practice site.

(o) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent or legally authorized to perform.

(p) Delegating professional responsibilities to a person when the licensee delegating the responsibility knows or has reason to know that the person is not qualified by training, experience, or licensure to perform those responsibilities. This shall not include acts of an enrolled student being supervised by a licensed massage therapy instructor.

(q) Acting as a massage therapist or operating a massage therapy establishment while unlicensed or with a revoked or suspended license.

(r) Practicing massage therapy at a site which is not either exempt from licensure or licensed as a massage therapy establishment, unless the massage therapy is done on-site or outcall at a location under the control of the client, or is done at an educational or trade site for demonstration purposes.

(s) As a licensed massage therapist, massage therapy establishment, or massage therapy school, failing to maintain professional and general liability insurance with an "A" rated or better insurance carrier in the amount of at least one million dollars.

(t) Failing to attend and/or provide evidence of attendance at sixteen (16) hours of approved continuing education course work in the twenty-four (24) months preceding the date renewal of licensure is due.

(u) Failing to perform a statutory or legal or rule-based obligation based upon a licensee in the practice of massage therapy.

(v) Failing to practice massage therapy with reasonable skill and safety to clients as a result of illness; use of alcohol, drugs, narcotics, chemicals, or other mind-altering substances; mental or physical condition.

(w) Failing to practice massage therapy with that level of care, skill, and treatment which is recognized by a reasonably prudent massage therapist as being acceptable under similar circumstances and conditions.

(x) Failing to maintain premises, supplies, and equipment of the massage therapy establishment in a clean and sanitary condition.

(y) Failing to include the licensee's license or registration number in an advertisement.

(4) The licensee has been convicted of a felony or of any crime arising out of or connected with the practice of massage therapy.

(5) The licensee has violated or aided and abetted in the violation of Chapter 43A of Title 34 of the Code of Alabama.

(6) The licensee is adjudicated as mentally incompetent by a court of law.

(7) The licensee uses controlled substances or habitually and excessively uses alcohol.

(8) The licensee has engaged in false, deceptive, or misleading advertising.

(9) The licensee has knowingly allowed the massage therapy establishment to be used as an overnight sleeping accommodation.

(10) The licensee has had a license revoked, suspended, or denied in any other territory or jurisdiction of the United States for any act described in this section.

(11) The applicant or licensee has been convicted of impersonating a massage therapist in another jurisdiction.

(12) As an individual who is governed by Chapter 43A of Title 34 of the Code of Alabama and who has a reasonable belief that another massage therapist has violated that chapter, has failed to inform the board in writing within thirty (30) calendar days after the date the individual discovered the activity.

(13) Refusal to complete a criminal history background check required by the board.

Author: Alabama Massage Therapy Licensing Board

Statutory Authority: Code of Ala. 1975, §34-43A-6

History: New Rule: Filed January 29, 2001; effective March 5, 2001. **Repealed and New Rule:** Published ~~_____~~; ~~effective~~

~~_____~~ September 30, 2024; effective November 14, 2024.

532-X-7-.02

Grounds for Mandatory Revocation of a License.

(1) The license of any individual who has been convicted of, or has entered a plea of nolo contendere to, a crime or offense involving prostitution or any other type of sexual offense shall be permanently revoked by the board according to the Administrative Procedures Act.

(2) The massage therapy establishment license of any massage therapy establishment wherein an individual has been convicted of, or entered a plea of nolo contendere to, an offense involving prostitution or any other type of sexual offense against a client, or which the board determines is a sexually oriented business, shall be permanently revoked by the board according to the Alabama Administrative Procedure Act.

Author: Alabama Massage Therapy Licensing Board

Statutory Authority: Code of Ala. 1975, §34-43A-6

History: New Rule: Published ; ~~effective~~ September 30, 2024; effective November 14, 2024.

532-X-7-.03

Complaints.

(1) Any individual may file with the board a written complaint regarding an allegation of impropriety by a massage therapist, massage therapy establishment, or other individual.

(2) Complaints shall be made in the following manner:

(a) Official complaints shall be made in writing and may be transmitted to the board via paper or electronic means.

(b) The following information is required for an official complaint:

1. The name of the massage therapist, massage therapy establishment, or other individual about whom the complaint is being made.

2. The name and contact information (telephone number, email address, etc.) of the individual filing the complaint. Board staff may generate written complaints based on information received in the line and scope of their work.

3. Specific allegation(s) which, if substantiated through investigation, would constitute violation(s) of Chapter 43A of

Title 34 of the Code of Alabama or the Alabama Massage Therapy Licensing Board Administrative Code.

(3) Complaints which satisfy the criteria in paragraphs (1) and (2) shall be referred to the Investigative Committee.

Author: Alabama Massage Therapy Licensing Board

Statutory Authority: Code of Ala. 1975, §34-43A-6

History: New Rule: Published ; ~~effective~~ September 30, 2024; effective November 14, 2024.

532-X-7-.04 Investigations.

(1) The board's Investigative Committee consists of one board member appointed by the board, the board's attorney assigned to the complaint, and the board's investigator assigned to investigate the complaint.

(2) The board's investigator(s) shall investigate the complaint. Upon complaint, the board may inspect the business premises of any licensee during normal business hours, so long as said inspection is made in furtherance of the investigation of a complaint. Upon complaint, the board may also request a criminal history background check of the subject of the complaint.

(3) The board's investigator(s) shall prepare an investigative summary for review by the Investigative Committee.

(4) The Investigative Committee may act on the investigation as follows:

(a) Return the complaint to the investigator(s) for further investigation.

(b) Determine that probable cause has been found that a violation has occurred.

1. If no probable cause is found, the Investigative Committee may dismiss the charges and prepare a written statement of the reasons for the decision.

2. A complaint may be re-opened at any time if circumstances warrant.

(c) Determine that probable cause exists that a violation has occurred.

1. Upon a finding that probable cause exists that a violation has occurred, the Investigative Committee shall initiate an administrative proceeding.

Author: Alabama Massage Therapy Licensing Board

Statutory Authority: Code of Ala. 1975, §34-43A-6

History: New Rule: Published ~~_____~~; ~~effective _____~~ September 30, 2024; effective November 14, 2024.

532-X-7-.05

Administrative Proceedings.

(1) Upon a finding of probable cause by the Investigative Committee, the Investigative Committee shall initiate an administrative proceeding in the name of the Board. The administrative proceedings constitute the commencement of a contested case against the subject of the complaint.

(2) Administrative proceedings may take the form of either an informal disposition or the issuance of an administrative complaint.

(3) Informal Disposition

(a) A complaint may be considered and resolved through alternative dispute resolution, informal conferences, meetings, or other informal means.

(b) The Investigative Committee may propose to the subject of the complaint an informal disposition in the form of a proposed consent order or default.

(c) If the subject of the complaint accepts the proposed informal disposition, the informal disposition shall be referred to the board for consideration. Such consideration shall be held without prejudice to the right of the board thereafter to institute formal proceedings based upon the same or related material if circumstances so warrant.

(d) If the board approves the informal disposition, the informal disposition becomes a final order of the board.

(e) If the board does not approve the informal disposition, the board may offer the subject of the complaint a different informal disposition or may refer the complaint for an administrative hearing.

(4) Administrative Hearings

(a) Administrative hearings shall be conducted in accordance with the requirements of the Alabama Administrative Procedure Act.

(b) A statement of charges and notice of hearing shall be issued to the subject of the complaint.

(c) The statement of charges and notice of hearing may be delivered by any of the following methods:

1. Personal service as in civil actions.
2. Certified mail, return receipt requested.
3. Commercial carrier, as described in the Alabama Rules of Civil Procedure.

(d) The Board shall provide for an administrative hearing before a hearing officer, who shall issue written findings of fact and conclusions of law and recommendations regarding disposition of the case for consideration by the board.

Author: Alabama Massage Therapy Licensing Board

Statutory Authority: Code of Ala. 1975, §34-43A-6

History: New Rule: Published ; ~~effective~~ September 30, 2024; effective November 14, 2024.

532-X-7-.06 Decisions of the Board.

(1) Based upon the evidence presented at the administrative hearing or pursuant to informal disposition, the board may take one or more of the following actions:

(a) Dismiss the administrative complaint in its entirety or any alleged violation in the complaint.

(b) Find the respondent not guilty of any or all of the violations alleged in the administrative complaint.

(c) Find the respondent guilty of any or all of the violations alleged in the administrative complaint. If the board finds the respondent guilty of one or more of the violations alleged in the administrative complaint, the board may take one or more of the following disciplinary actions against the respondent:

1. Suspend the license of a massage therapist or establishment
2. Revoke the license of a massage therapist or establishment.
3. Refuse to issue or renew a license

4. Impose a civil penalty after notice and opportunity for hearing pursuant to the Alabama Administrative Procedures Act.

5. Initiate a civil action for an injunction with penalties and cost against a person alleged to be in violation of 34-43A-1 et seq.

(d) The board may present the misconduct to the local District Attorney in the jurisdiction where the alleged violation is to have occurred for appropriate action.

(2) The decisions of the board shall be in writing in the form of an Order, a copy of which shall be mailed or delivered to the subject of the complaint.

(3) The decisions of the board shall be subject to public dissemination, including, but not limited to the required reporting of disciplinary actions to any required databanks.

(4) Judicial review of decisions of the board may be sought in the Circuit Court of Montgomery County, Montgomery, Alabama. Appeals are to be perfected in accordance with the Alabama Administrative Procedures Act.

Author: Alabama Massage Therapy Licensing Board

Statutory Authority: §§34-43A-6; 34-43A-13, 34-43A-16

History: New Rule: Published ; ~~effective~~ September 30, 2024; effective November 14, 2024.

532-X-7-.07 Disciplinary Infraction Fine Schedule.

An administrative fine of not more than \$10,000 may be imposed upon an individual governed by Chapter 43A of Title 34 of the Code of Alabama, who:

(1) Had a reasonable belief that another massage therapist has violated Chapter 43A of Title 34 of the Code of Alabama and did not inform the board in writing within thirty (30) calendar days after the date the individual discovered this

(2) Performed massage therapy without having obtained a license.

Author: Alabama Massage Therapy Licensing Board

Statutory Authority: Code of Ala. 1975, §34-43A-6

History: New Rule: Published ; ~~effective~~ September 30, 2024; effective November 14, 2024.

532-X-7-.08 Unlicensed Practice.

Upon a finding that an individual governed by this chapter has performed massage therapy without having obtained a license, the board may do any of the following:

(1) Impose an administrative fine of not more than ten thousand dollars (\$10,000).

(2) Issue a cease-and-desist order.

(3) Petition the circuit court of the county where the act occurred to enforce the cease-and-desist order and collect the assessed fine.

Author: Alabama Massage Therapy Licensing Board

Statutory Authority: Code of Ala. 1975, §34-43A-6

History: New Rule: Published ; ~~effective~~ September 30, 2024; effective November 14, 2024.

532-X-7-.09 Additional Remedies.

(1) The board may seek an injunction against any individual or establishment in violation of this chapter.

(2) In an action for an injunction, the board may demand and recover a civil penalty of fifty dollars (\$50) per day for each violation, reasonable attorney fees, and court costs.

Author: Alabama Massage Therapy Licensing Board

Statutory Authority: Code of Ala. 1975, §34-43A-6

History: New Rule: Published ; ~~effective~~ September 30, 2024; effective November 14, 2024.

532-X-7-.10 Civil Penalty Schedule.

(1) Civil penalties begin at \$500.00 per violation and are capped at \$10,000 dollars per violation. Board orders may address more than one violation.

(2) ~~Reprimands~~ For cases which do not rise to the level of suspension: \$500.00 per violation with increased fines for level of responsibility and severity of conduct.

(3) Suspension: \$1,000.00 per violation with increased fines for level of responsibility and severity of conduct.

Author: Alabama Massage Therapy Licensing Board

Statutory Authority: Code of Ala. 1975, §34-43A-6

History: New Rule: Published ; ~~effective~~ September 30, 2024; effective November 14, 2024.